

## § 4221.10

modification or reconsideration suspends the 30-day period under section 4221(b)(2) of ERISA for requesting court review of the award. The 30-day statutory period again begins to run when the arbitrator denies the motion pursuant to paragraph (c) of this section or renders a revised award.

(b) *Grounds for modification or reconsideration.* The arbitrator may grant a motion for modification or reconsideration of the award only if—

(1) There is a numerical error or a mistake in the description of any person, thing, or property referred to in the award; or

(2) The arbitrator has rendered an award upon a matter not submitted to the arbitrator and the matter affects the merits of the decision; or

(3) The award is imperfect in a matter of form not affecting the merits of the dispute.

(c) *Decision of arbitrator.* The arbitrator shall grant or deny the motion for modification or reconsideration, and may render an opinion to support his or her decision within 20 days after the motion is filed with the arbitrator, or within 30 days after the motion is filed if an objection is also filed.

## § 4221.10 Costs.

The costs of arbitration under this part shall be borne by the parties as follows:

(a) *Witnesses.* Each party to the dispute shall bear the costs of its own witnesses.

(b) *Other costs of arbitration.* Except as provided in § 4221.6(d) with respect to a transcript of the hearing, the parties shall bear the other costs of the arbitration proceedings equally unless the arbitrator determines otherwise. The parties may, however, agree to a different allocation of costs if their agreement is entered into after the employer has received notice of the plan's assessment of withdrawal liability.

(c) *Attorneys' fees.* The arbitrator may require a party that initiates or contests an arbitration in bad faith or engages in dilatory, harassing, or other improper conduct during the course of the arbitration to pay reasonable attorneys' fees of other parties.

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## § 4221.11 Waiver of rules.

Any party that fails to object in writing in a timely manner to any deviation from any provision of this part is deemed to have waived the right to interpose that objection thereafter.

## § 4221.12 Calculation of periods of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[68 FR 61356, Oct. 28, 2003]

## § 4221.13 Filing and issuance rules.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

[68 FR 61356, Oct. 28, 2003]

## § 4221.14 PBGC-approved arbitration procedures.

(a) *Use of PBGC-approved arbitration procedures.* In lieu of the procedures prescribed by this part, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with paragraph (c) of this section. A plan may by plan amendment require the use of a PBGC-approved procedure for all arbitrations of withdrawal liability disputes, or the parties may agree to the use of a PBGC-approved procedure in a particular case.

(b) *Scope of alternative procedures.* If an arbitration is conducted in accordance with a PBGC-approved arbitration procedure, the alternative procedure

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shall govern all aspects of the arbitration, with the following exceptions:

(1) The time limits for the initiation of arbitration may not differ from those provided for by § 4221.3.

(2) The arbitrator shall be selected after the initiation of the arbitration.

(3) The arbitrator shall give the parties opportunity for prehearing discovery substantially equivalent to that provided by § 4221.5(a)(2).

(4) The award shall be made available to the public to at least the extent provided by § 4221.8(g).

(5) The costs of arbitration shall be allocated in accordance with § 4221.10.

(c) *Procedure for approval of alternative procedures.* The PBGC may approve arbitration procedures on its own initiative by publishing an appropriate notice in the FEDERAL REGISTER. The sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application shall include:

(1) A copy of the procedures for which approval is sought;

(2) A description of the history, structure and membership of the organization that sponsors the procedures; and

(3) A discussion of the reasons why, in the sponsoring organization's opinion, the procedures satisfy the criteria for approval set forth in this section.

(d) *Criteria for approval of alternative procedures.* The PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures. The PBGC may request comments on the application by publishing an appropriate notice in the FEDERAL REGISTER. Notice of the PBGC's decision on the application shall be published in the FEDERAL REGISTER. Unless the notice of approval specifies otherwise, approval will remain effective until revoked by the PBGC through a FEDERAL REGISTER notice.

[61 FR 34109, July 1, 1996, as amended at 68 FR 61356, Oct. 28, 2003]